

Wage and Hour Liability

Markel Global Insurance



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Markel Global Insurance is dedicated to the specialized needs of sophisticated insureds and producers. Our underwriters bring meaningful expertise and advanced technical analysis to each transaction in the areas of casualty, professional liability, property, and marine. Markel Global Insurance has a network of offices located in jurisdictions that allow customized solutions for the long-term needs of our customers.

Wage and Hour litigation under the Fair Labor Standards Act (FLSA) and state law equivalents represents one of the greatest threats to US companies today. Federal and state lawsuits on a single plaintiff, class, collective, and hybrid basis have increased dramatically over the last decade.

Additionally, the US Department of Labor rules are constantly changing, most recently impacting, for exempt status classification, the minimum compensation levels required.

Employees who successfully bring actions against their employers are able to recover double the actual damages they prove and attorneys' fees.

Consequently, the risk posed in complying with new regulations will be high for companies in the near term and the cost of such actions could be quite significant.

Typical Employment Practices Liability (EPL) policies are not designed to provide protection for Wage and Hour claims, and in response to feedback from our clients, Markel Bermuda Limited was the first carrier to offer Wage and Hour coverage.

Target class

- Companies with US employees
- No headcount limitations
- All industry classes considered including:
 - Retail
 - Food service
 - Hospitality
 - Healthcare
 - Construction

Capacity

- \$25m limits available
- Primary or excess basis
- Minimum \$1m retention

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Policy coverage

- Bermuda form allows broader grant of coverage, unaffected by US state insurance regulation.
- Broad definitions:
 - Wage and Hour violation includes:
 - Violations of the FLSA and any similar federal, state, or local laws including California's PAGA claims
 - Misclassification of employees (including misclassification of employees as independent contractors)
 - Inaccurate payment of wages, including tip credit issues
 - Incomplete pay stub disclosures
 - "Donning and doffing" claims
 - Non-compliance with meal and break period requirements
 - Failure to pay wages for off-the-clock work
 - Claim - includes lawsuits, government administrative proceedings, mediations, arbitrations, or other ADR proceedings
 - Insured - includes entities in which the insured owns >50% of the voting stock or has controlling interest
 - Loss - includes:
 - Pre- and post-judgment interest
 - Attorney fees
 - Opposing counsel fees
 - Statutory liquidated damages
 - Punitive and exemplary damages
 - Statutory fines and penalties
- Indemnity coverage (settlement of claims or judgments) and defense costs
- Insured retains the right to select defense counsel
- Narrow conduct exclusion – triggered only by final adjudication of willful violations; defense costs covered until the exclusion is triggered
- Insured may settle claim within the retention without insurer's consent

- The insurer will advance payments for loss on a periodic basis prior to final resolution of claim
- Automatic coverage of new subsidiaries subject to a threshold
- Bordereau reporting for most claims, with as soon as practicable notification for class actions
- 30-day post policy period final wrap up reporting of claims

Contacts - Bermuda

Jim Gray

Executive Vice President and
Chief Underwriting Officer
Professional Liability Insurance
441-294-2261

Sharon Lynch

Senior Vice President
Professional Liability Insurance
441-279-2324

Contact - Dublin

Joey O'Dea

Managing Director
Professional Liability Insurance
+353-1-416-1506

Markel Global Insurance offices

Markel Global Insurance
Markel House
2 Front Street
Hamilton HM 11, Bermuda
441-296-8800

Markel Global Insurance
7/8 Wilton Terrace
Dublin 2, Ireland

